84-704

Office - Supreme Court, U.S.
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CLERK

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

CHRISTIAN D. KEEDY
Counsel for the Petitioner, Tropigas, S.A.
1301 Alfred I. duPont Bldg.
169 East Flagler Street
Miami, Florida 33131
Telephone: (305) 379-6523

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

QUESTION PRESENTED

WHETHER IT IS A VIOLATION OF THE 14TH AMENDMENT FOR A FLORIDA COURT TO ASSERT IN PERSONAM JURISDICTION OVER A NON-RESIDENT PANAMANIAN CORPORATION IN PERSONAL INJURY LITIGATION ARISING FROM AN ACCIDENT WHICH OCCURRED IN JAMAICA, WEST INDIES, WHERE THE ALIEN CORPORATE DEFENDANT DOES NOT DO BUSINESS IN FLORIDA AND THE PLAINTIFFS WERE RESIDENTS AND CITIZENS OF JAMAICA AT THE TIME OF THE ACCIDENT.

PARTIES TO THE PROCEEDING

Petitioner, TROPIGAS, S.A., is a Panamanian corporation which does not operate or do business in the United States. TROPIGAS, S.A. is a resident of Jamaica and does business there. It is a subsidiary of Tropigas International Corporation, a Delaware holding company. 1/

The Respondents are RICHARD ANDERSON, PERCIVAL ANDERSON, MELVA ANDERSON, TREVOR ANDERSON and SHARON ANDERSON, Jamaican citizens who allege personal injuries as a result of a fire in Jamaica in February of 1981.

1/ TROPIGAS, S.A. is composed of wholly owned operating companies located in Bermuda, Dominican Republic, Haiti, Jamaica, Panama, El Salvador, Honduras, and Guatemala. TROPIGAS, S.A. owns more than five (5) percent of the stock of Tropigas de Centro America (Panama), Tropigas de Costa Rica, Tropigas de Nicaragua, Tropigas de El Salvador, Tropigas de Honduras, Tropigas de Guatemala, Terminales de Gas, S.A. (Guatemala) and Cylgas de Costa Rica. None of these companies do business in Florida or elsewhere in the United States.

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

- versus -

RICHARD ANDERSON, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

OPINIONS BELOW

The opinion of the Third District Court of Appeal of Florida affirming the trial court's denial of the Motion to Dismiss filed by Petitioner is included in the Appendix to this Petition [App. p. 1a] and is reported at 447 So. 2d 338 (Fla. 3d DCA 1984). Also included in Petitioner's

Appendix is the opinion of the Supreme Court of Florida dismissing Petitioner's Appeal to that Court. [App. p. 4a]. The opinion of the Supreme Court of Florida is not reported as of the date of this petition.

STATEMENT OF JURISDICTIONAL GROUNDS

A. Date of Decision Sought to be Reviewed.

The decision of the Third District Court of Appeal of Florida which Petitioner seeks to have reviewed is dated and was entered February 28, 1984. [App. p. 1a].

B. Date of Order on Rehearing.

Petitioner filed a Motion for Rehearing and Rehearing En Banc which was

denied by the Third District Court of Appeal of Florida by its Order dated and entered on April 13, 1984. [App. p. 3a].

C. Jurisdictional Provision Relied on.

Petitioner invokes the discretionary jurisdiction of this Court pursuant to the provisions of 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The Constitution of the United States at the Fourteenth Amendment, Section 1 provides that:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is an action by Respondents for personal injuries alleged to have been sustained in a fire in Kingston, Jamaica on February 11, 1981 caused by a faulty gas cylinder or valve. Respondents were at all times prior to and at the time of the accident, citizens and residents of Jamaica.

Petitioner is and was at all times material hereto, a Panamanian corporation operating in Central America and in the Caribbean. TROPIGAS, S.A. is wholly owned by TROPIGAS INTERNATIONAL CORP. [App. p. 16a].

TROPIGAS INTERNATIONAL CORP., (also named as a Defendant but not involved in this appeal), is a holding company which monitors the financial performance of its

wholly owned subsidiaries including TROPIGAS, S.A. [App. p. 27a]. Petitioner provides certain financial information to its parent and has some common officers with it. TROPIGAS INTERNATIONAL CORP. occasionally assists TROPIGAS, S.A. in purchasing materials available only in the United States. [App. p. 63a]. The goods purchased through its parent in the years 1980-1983 did not exceed a total of $10,000.00. [App. p. 54a].

TROPIGAS, S.A. maintains bank accounts in each country where it operates. [App. p. 51a]. It also maintains through a bank in Florida an offshore account in the Bahamas where its funds are invested in Eurodollars. The purchases referred to above are made with checks drawn on this account. [App. pp. 58a-59a].

The facts which make it clear that the maintenance of jurisdiction over

TROPIGAS, S.A. is a denial of due process are listed below:

1. The accident alleged occurred in Jamaica.

2. The Respondents were citizens and residents of Jamaica at the time of the accident and are still citizens of Jamaica.

3. The valve, cylinder and gas alleged to have caused the accident were purchased, delivered and used in Jamaica.

4. Respondents have alleged and Petitioner agrees that Jamaican law applies.

5. The majority of the actual and potential witnesses reside in Jamaica, including occurrence witnesses, medical witnesses, background witnesses and technical witnesses.

6. Petitioner has no means of obtaining compulsory process over witnesses

or other evidence located in Jamaica [App. pp. 36a-37a] while Respondents have obtained orders from the Florida trial court requiring Petitioner to produce witnesses and documents from Jamaica in Florida.

7. Petitioner has no means of impleading third parties in Jamaica such as the manufacturer of the gas which is the Jamaican government, or the distributor of the cylinder involved in the alleged accident, which does business solely in Jamaica.

8. TROPIGAS, S.A. has never sold any products in Florida. [App. p. 29a].

9. TROPIGAS, S.A. has never solicited any business in Florida; [App. p. 29a].

10. TROPIGAS, S.A. has never earned any income in Florida; [App. pp. 17a-43a].

11. TROPIGAS, S.A. has not been able to transfer any earnings out of its Jamaican branch for six years because of currency control in Jamaica. [App. p. 57a].

12. TROPIGAS, S.A. has no employees in Florida; [App. p. 28a].

13. The common officers of TROPIGAS, S.A. and TROPIGAS INTERNATIONAL CORP. are not compensated for any services provided to TROPIGAS, S.A., and these common officers do not run the business activities of TROPIGAS, S.A. [App. pp. 28a, 38a-39a, 61a].

14. TROPIGAS, S.A. has never been authorized to do business in Florida. [App. p. 14a].

15. TROPIGAS, S.A. is not engaged in business anywhere in the United States. [App. pp. 19a, 28a].

16. TROPIGAS, S.A. owns no real property in Florida. [App. p. 29a].

17. The vast majority of purchases made by TROPIGAS, S.A. are made outside of Florida, [App. p. 53a], and the few purchases made through Florida are for items not obtainable elsewhere. [App. p. 63a]. In the years 1980-1983 these purchases did not exceed a total of $10,000. [App. p. 54a].

18. The operations of TROPIGAS, S.A. are controlled by its division managers, who are located in each country where it operates and they direct the daily financial and operational activities in each country. [App. p. 28a].

19. TROPIGAS, S.A. reports certain financial data to TROPIGAS INTERNATIONAL CORP. which provides data processing services, but each branch of TROPIGAS, S.A. has its own bookkeeping department and

maintains its own separate accounting records. [App. p. 62a].

20. Occassionally TROPIGAS, S.A. requests and receives technical advice from TROPIGAS INTERNATIONAL CORP., but the divisions of TROPIGAS, S.A. have their own technical staffs, are free to consult other sources for technical advice and they often do. The technical assistance is generally provided in the foreign country where the TROPIGAS, S.A. division is located, and the TROPIGAS, S.A. division is not required to follow the advice given by TROPIGAS INTERNATIONAL CORP. [App. p. 48a-49a].

21. The local division managers are equal to chief operating officers for the operations in each country and are delegated complete authority to run their division independently. [App. p. 61a].

22. The common officers of TROPIGAS, S.A. who are located in Florida do not involve themselves in the operation of TROPIGAS, S.A. beyond receiving advisory reports, consolidated financial data and occasional capital expenditure requests. [App. pp. 38a-39a, 60a-61a].

23. The division managers in each country are responsible for the safety of that division [App. pp. 27a-28a, 42a] and are responsible for the selection of the valves and cylinders to be used by that division. [App. pp. 38a, 40a-48a, 51a].

24. The final decision as to all operational matters, including technical matters, rests with the division manager in each country. [App. pp. 28a, 40a-48a].

25. Contracts are not negotiated in Florida for TROPIGAS, S.A., [App. p. 39a], and the purchases made by division managers in each country are not normally reviewed in Florida. [App. p. 52a].

26. Regulations promulgated by the government of Jamaica control the types of valves and cylinders used in Jamaica by TROPIGAS, S.A. [App. p. 50a].

27. Cylinders for use in Jamaica have never been purchased by TROPIGAS, S.A. in Florida. [App. pp. 52a-53a].

28. The limited services provided to TROPIGAS, S.A. by its parent company in Florida are charged to and paid for by TROPIGAS, S.A. [App. p. 56a].

Respondents filed an action seeking damages for personal injuries in the Circuit Court in and for Dade County, Florida, alleging that TROPIGAS, S.A. and TROPIGAS INTERNATIONAL CORP. committed various acts of negligence which proximately caused their injuries. TROPIGAS, S.A. filed a motion to dismiss the Complaint on grounds that the courts of Florida could not constitutionally main-

tain in personam jurisdiction over TROPIGAS, S.A. and that the courts of Florida were not a convenient forum. [App. p. 11a]. Respondents took twenty-two depositions in an effort to develop facts which would support their assertion of jurisdiction. The trial court, in denying Petitioner's Motion to Dismiss, failed to provide any grounds for its denial. [App. p. 9a].

TROPIGAS, S.A. then took an interlocutory appeal to the Third District Court of Appeal of Florida which affirmed the decision of the trial court in a brief opinion. [App. p. 1a].

After the Third District Court of Appeal denied a rehearing, an appeal was filed in the Supreme Court of Florida by Petitioner. This appeal was dismissed, and Petitioner filed a Motion for Clarification, which was denied. [App. p. 5a].

TROPIGAS, S.A. raised the constitutional issues relating to the violation of its Fourteenth Amendment due process rights in its Motion to Dismiss [App. p. 11a], Memorandum in Support Of Its Motion to Dismiss (not made part of the Appendix to this Petition due to its length), Notice to Invoke Discretionary Jurisdiction of the Supreme Court of Florida [App. p. 6a], and in TROPIGAS, S.A.'s Initial Brief to the District Court of Appeal (also not attached for reasons of length.)

At every available opportunity TROPIGAS, S.A. has raised the constitutional issues that are the bedrock of this appeal. There has not been a single occasion where the denial of Petitioner's right to Fourteenth Amendment due process was not raised and put before the court.

REASONS FOR GRANTING WRIT

The Third District Court of Appeal of Florida has violated the rights guaranteed to TROPIGAS, S.A. by the Fourteenth Amendment by affirming the denial of Petitioner's Motion to Dismiss because there are insufficient contacts to maintain in personam jurisdiction over TROPIGAS, S.A. based on the facts of this case. The decisions from which this Petition arises are contrary to this Court's decision in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and the cases which have followed that decision including Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984), decided on April 24, 1984 (after the decisions of the trial court and the Third District Court of Appeal of Florida in the instant case).

ARGUMENT

THE DECISION FROM WHICH REVIEW IS SOUGHT CONFLICTS WITH THE DECISION OF HELICOPTEROS NACIONALES DE COLOMBIA, S.A. V. HALL, 104 S.CT. 1868 AND IS CONTRARY TO THE PRINCIPLES OF IN PERSONAM JURISDICTION OVER NON-RESIDENT CORPORATE DEFENDANTS DEFINED IN THE DECISIONS OF THE COURT IN INTERNATIONAL SHOE CO. V. WASHINGTON, 326 U.S. 310 (1945) AND WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON, 444 U.S. 286 (1980)

The issue before the Court is whether the type and extent of activities engaged in by TROPIGAS, S.A. in Florida are sufficient properly to subject that non-resident alien corporation to the in personam jurisdiction of the courts of Florida.

The Fourteenth Amendment limits the ability of a state to assert in personam jurisdiction over a non-resident defendant. Pennoyer v. Neff, 95 U.S. 714

(1877). The requirements of due process are satisfied with regard to in personam jurisdiction over a non-resident corporate defendant only where that defendant has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

No polestar exists by which the type and extent of contacts of a non-resident corporate defendant can be precisely measured to determine the propriety of an assertion of in personam jurisdiction. As stated in International Shoe:

> It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. . . . whether due process is satisfied must depend rather upon the quality and nature of the activ-

> ity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. (Emphasis added).

326 U.S. at 319.

The principal point made by Helicopteros, supra, is that the holding of International Shoe, and cases following it are specifically applicable to a non-resident alien corporation. International Shoe held that in order for a forum to exercise jurisdiction over a non-resident defendant there must exist "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316, citing Milliken v. Meyer, 311 U.S. 457, 463 (1940). Most importantly the activities of the corporation must "have not only been continuous and systematic, but also give rise to the liabilities sued

on." 326 U.S. at 317. See also, Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437 (1952); Restatement (Second) of Conflict of Laws § 47 (1971).

In defining the extent of permissible activities which would not be sufficient contacts, the Court in International Shoe stated that:

> [I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporations behalf are not enough to subject it to suit on causes of action unconnected with the activities there.

326 U.S. at 317. At best TROPIGAS, S.A.'s activities in Florida are "isolated items of activities". They are not related to the facts which are the basis of this personal injury action, which arises from an accident in Jamaica where TROPIGAS, S.A. ran an ongoing business, the activites of which allegedly gave rise to

the injuries suffered by the Plaintiffs/ Respondents.

Facts of this case are closely analogous to those in Helicopteros, supra, a wrongful death action arising from the crash of a helicopter in Peru. In Helicopteros it was held that a non-resident alien corporation's activities in Texas consisting of negotiating contracts, accepting checks drawn on local banks, training employees and making substantial purchases of helicopters and parts were not sufficient contacts with Texas so as to permit the maintenance of jurisdiction over that defendant by the personal representatives of American citizens who were killed when one of the helicopters crashed in Peru. The pilot of the helicopter had been trained in Texas and the decedent's employer's headquarters were in Texas.

Among the contacts of the defendant in Helicopteros was the existence of substantial purchases in Texas of helicopters and parts along with related training trips. In rejecting the contention that these purchases and training trips were significant benchmarks in the due process determination, the Court held that: "Mere purchases, even if occuring at regular intervals, are not enough to warrant a state's assertion of in personam jurisdiction over a non-resident corporation in a cause of action not related to those purchase transactions." 104 S.Ct. at 1872, citing Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923).

Especially instructive in Helicopteros is the Court's citation to Hanson v. Denckla, 357 U.S. 235 (1958) for the rule that "the unilateral activity of those who

claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state." 357 U.S. at 253. This is especially significant because the court in Hanson, in an in-depth analysis of the contacts rule, stated that:

> The application of that rule will vary with the quality and nature of the defendant's activity but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

357 U.S. at 253.

An analysis of the quality and nature of contacts Petitioner has with the State of Florida reveals that its contacts and activities are not acts by which TROPIGAS, S.A. purposefully avails itself of the benefits and protections of Florida law.

The facts in Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) demonstrate the type of activities of an alien corporation which provide a basis for jurisdiction. In Perkins the Court examined the totality of the corporate activities of the corporate defendant being carried on in and out of the jurisdiction, and found that the activities in the forum constituted continuous and systematic corporate activities when compared to the overall corporate activities of the corporation. In Perkins, as a result of the Japanese occupation of the Phillipines, the president of the defendant alien company moved its operations to Ohio and, in essence, conducted most, if not all, of the corporate business in Ohio.

By comparison the activities of TROPIGAS, S.A. in Florida are not con-

tinuous or systematic, and are only a very small portion of the overall corporate activities of the Petitioner. The only recurrent contact TROPIGAS, S.A. has with Florida is that financial information is reported there to its parent corporation. There is no case which holds that the mere act of reporting financial information to an entity in the forum can constitute a sufficient basis upon which to subject the reporting entity to the in personam jurisdiction of the forum.

In refusing to grant TROPIGAS, S.A.'s Motion to Dismiss the trial court and the District Court of Appeal improperly held that TROPIGAS, S.A. was subject to the in personam jurisdiction of the Florida courts on the basis of the irregular and incidental contacts TROPIGAS, S.A. has with the state of Florida. This holding conflicts with the Court's decisions in

Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) and International Shoe Co. v. Washington, 326 U.S. 310 (1945) and results in an unconstitutional exercise of in personam jurisdiction over TROPIGAS, S.A. in violation of the due process clause of the Fourteenth Amendment.

This cause should be summarily remanded to the District Court of Appeal of Florida, Third District, for an opinion consistent with the Court's decision in Helicopteros Nacionales De Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984).

CONCLUSION

For the foregoing reasons set forth above, Petitioner urges that this Petition for a Writ of Certiorari be granted.

CHRISTIAN D. KEEDY
Counsel for the Petitioner,
Tropigas, S.A.
1301 Alfred I. duPont Bldg.
169 East Flagler Street
Miami, Florida 33131
Telephone: (305) 379-6523

DATED: August 20, 1984.

CERTIFICATE OF SERVICE

I, CHRISTIAN D. KEEDY, being over the age of 18 years, hereby certify that I have this twentieth day of August, 1984, served three copies of the foregoing Petition For Writ Of Certiorari to the District Court of Appeal, Third District to all counsel of record listed below with their mailing addresses, by mailing said copies in sealed envelopes, first class postage prepaid, deposited at the United States Post Office located at One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida.

Robert J. Dickman, P.A.
4675 Ponce de Leon Blvd.
Suite 302
Coral Gables, Florida 33146

Robert J. Black, Esq.
420 South Dixie Highway
Coral Gables, Florida 33146

Sam Daniels, Esq.
1414 Alfred I. duPont Bldg.
169 E. Flagler Street
Miami, Florida 33131

Debra L. Brady, Esq.
1301 Alfred I. duPont Building
169 E. Flagler Street
Miami, Florida 33131

/s/_____
CHRISTIAN D. KEEDY

APPENDIX

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1984

TROPIGAS, S.A. **
Appellant, **

vs. ** CASE NO. 83-2854

RICHARD ANDERSON, et al., **
Appellee. **

Opinion filed February 28, 1984.

An Appeal from a non-final order from the Circuit Court for Dade County, Mario Goderich, Judge.

Christian D. Keedy, for appellant.

Daniels and Hicks and Sam Daniels and Patrice A. Talisman; Robert J. Dickman, for appellees.

Before HENDRY, NESBITT and PEARSON, Daniel S., JJ.

PER CURIAM.

Affirmed. § 48.081(5), Fla. Stat. (1983); Houston v. Caldwell, 359 So. 2d 858 (Fla. 1978); Sempe v. Coordinated Caribbean Transport, Inc., 363 So. 2d 194 (Fla. 3d DCA 1978); Adams v. Seaboard Coast Line R.R., 224 So. 2d 797 (Fla. 1st DCA 1969).

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D., 1984
FRIDAY, APRIL 13, 1984

TROPIGAS, S.A., **

Appellant, **

vs. ** CASE NO. 83-2854

RICHARD ANDERSON, et al., **

**

Appellee.

Upon consideration, appellant's motion for rehearing is hereby denied.

A True Copy

ATTEST:
LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By/s/Evelyn A. Hillman
Deputy Clerk

cc: Christian D. Keedy
Sam Daniels
Robert J. Dickman

SUPREME COURT OF FLORIDA

TUESDAY, MAY 22, 1984

TROPIGAS, S.A.,	*	
	*	
Petitioner,	*	
	*	
v.	*	CASE NO. 65,313
	*	
RICHARD ANDERSON, et al.,	*	District Court of Appeal, 3d District - No. 83-2854
Respondents.	*	
	*	

* * * * * * * * * * * *

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy TC
TEST:

cc: Hon. Louis J. Spallone, Clerk
Hon. Mario Goderich, Judge
Hon. Richard P. Brinker, Clerk
Christian D. Keedy, Esquire
Robert J. Dickman, Esquire
Robert J. Black, Esquire
Sam Daniels, Esquire
Debra L. Brady, Esquire

Sid J. White
Clerk, Supreme Court
by:/s/ Tanys Carroll
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
MONDAY, JULY 9, 1984

TROPIGAS, S.A.,	**	
Petitioner,	**	CASE NO. 65,313
vs.	**	District Court of Appeal, 3d
RICHARD ANDERSON, et al.,	**	District - No. 83-2854
Respondents.	**	

On consideration of the motion for clarification filed by attorney for petitioner,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy TC

TEST:

cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Mario P. Goderich, Judge
Christian D. Keedy, Esquire
Robert J. Dickman, Esquire
Sam Daniels, Esquire
Robert J. Black, Esquire
Debra L. Brady, Esquire

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT
JANUARY TERM, A.D., 1984
CASE NO. 83-2854

TROPIGAS, S.A.,	:	
Appellant,	:	NOTICE TO INVOKE DISCRETIONARY
v.	:	JURISDICTION
RICHARD ANDERSON, et al.,	:	
Appellees.	:	

NOTICE IS GIVEN that TROPIGAS, S.A., Defendant, Petitioner, invokes the discretionary jurisdiction of the Supreme Court to review the decision of this Court rendered February 28, 1984, Rehearing denied April 13, 1984. The decision of the Third District Court of Appeal expressly construes Amendment XIV, Section 1 of the United States Constitution and

Article 1, Section 9 Due Process of the Florida Constitution.

CHRISTIAN D. KEEDY, P.A.
Attorney for Petitioner
1301 Alfred I. duPont Building
169 E. Flagler Street
Miami, Florida 33131
(305) 379-6523

By/s/Christian D. Keedy
Christian D. Keedy, P.A.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was mailed on this 11th day of May, 1984 to: Robert J. Dickman, P.A., 4675 Ponce de Leon Blvd., Suite 302, Coral Gables, Florida 33146; Robert J. Black, Esquire, 420 S. Dixie Highway, Coral Gables, Florida, 33146; Sam Daniels, Esquire, 1414 Alfred I. duPont Building, 169 E. Flagler Street, Miami, Florida 33131; and Debra L. Brady, Esquire, 1301 Alfred I.

duPont Building, 169 E. Flagler Street, Miami, Florida 33131.

By/s/Christian D. Keedy
Christian D. Keedy, P.A.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.	)	
Plaintiffs,	)	
vs.	)	ORDER
TROPIGAS INTERNATIONAL CORP. and TROPIGAS, S.A.	)	
Defendants.	)	

THIS MATTER having come before the Court on motion of TROPIGAS, S.A. to dismiss the Complaint, and the Court having heard argument of counsel, it is hereby

ORDERED AND ADJUDGED that TROPIGAS, S.A.'s Motion to Dismiss be and the same is hereby denied.

DONE AND ORDERED in chambers at Miami, Dade County, Florida this 15 day of November, 1983.

/s/ Mario Goderich
Circuit Court Judge

Copies furnished to:

Christian D. Keedy, P.A.
Debra L. Brady, Esq.
Robert J. Dickman, P.A.
Robert J. Black, Esq.
Sam Daniels, Esq.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.,)

Plaintiffs,)

v.)

TROPIGAS INTERNATIONAL)
CORPORATION, and
TROPIGAS, S.A.,)

Defendants.)

MOTION TO DISMISS

COMES NOW, the Defendant, TROPIGAS, S.A., by and through its undersigned attorneys, and moves this Court for an Order dismissing the Plaintiffs' Complaint for the reasons and on the grounds set out below:

1. This Court lacks personal jurisdiction over Tropigas, S.A.

2. The maintenance of this action by this Court against Tropigas, S.A. is a denial of due process to that Defendant.

3. This Court lacks jurisdiction over the subject matter of this litigation.

4. This litigation against Tropigas, S.A. should be dismissed on the basis of forum non conveniens.

5. This case should be dismissed because venue is improper.

6. Counts II, III, and IV of the Complaint should be dismissed because they fail to state a cause of action or claim upon which relief may be granted under the law of Jamaica, which is applicable herein.

7. The claims of Sharon Anderson and Trevor Anderson are not asserted by the proper party.

Respectfully submitted,

CHRISTIAN D. KEEDY, P.A.
Attorney for Tropigas, S.A.
169 East Flagler Street
Miami, Florida 33131
Telephone: (305) 379-6523

By/s/Christian D. Keedy
Christian D. Keedy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss was mailed to Robert J. Dickman, P.A., 4625 Ponce de Leon Boulevard, Suite 302, Coral Gables, Florida 33146; and to Robert J. Black, Esq., 420 South Dixie Highway, Coral Gables, Florida, this 25th day of January, 1983.

By/s/Christian D. Keedy
Christian D. Keedy

STATE OF FLORIDA
DEPARTMENT OF STATE

I, GEORGE FIRESTONE, Secretary of State of the State of Florida, do hereby certify that the files of this office do not disclose a record of a corporation by the name of TROPIGAS, S.A., either as a domestic corporation or as a foreign corporation, active or dissolved.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this 29th day of April, 1983.

/s/ George Firestone
Secretary of State

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.,)

Plaintiffs,)

vs.)

TROPIGAS INTERNATIONAL CORPORATION and TROPIGAS, S.A.,)

Defendants.)

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

COMES NOW, KIRK FROHME, who after being duly sworn does depose and say as follows:

1. My name is Kirk Frohme and I am a partner in the accounting firm of Coopers & Lybrand.

2. I am a certified public accountant and in that capacity I have

worked with Tropigas International Corp. and its subsidiaries over the past six years.

3. From this work and from review of the financial books and records of Tropigas International Corp., I have become familiar with that company's activities and the businesses of its subsidiaries and their divisions in Central America and the Caribbean. The business of their subsidiaries and divisions has been generally the same over the last six years.

4. Tropigas, S.A. is a wholly owned subsidiary of Tropigas International Corp.

5. Each division or subsidiary of Tropigas, S.A. exists and is operated as a separate and distinct business enterprise in the country where it is located.

6. Tropigas International Corp. and Tropigas, S.A. are separate and distinct

corporations in form, i.e., as the books and records are kept, and in substance, i.e., as the day-to-day activities of these companies are conducted.

7. Tropigas International Corp. and Tropigas, S.A. are separately maintained and managed, both in their day-to-day activities and in their planning for the future.

8. Tropigas, S.A. is not and has not been undercapitalized. It has now and has had in the past six years sufficient income to pay the expenses of its operation and finance capital improvements and expansion.

9. Tropigas, S.A. has no employees in the United States and earns no income in the United States. Tropigas, S.A. does not pay U.S. income tax and does not have any investments in the United States.

10. Financial books and records of Tropigas, S.A. are maintained separately from the financial books and records of Tropigas International Corp. All transactions between the two corporations are represented by appropriate entries in their respective books.

11. Tropigas, S.A. and Tropigas International Corp. have some common officers and directors, but proper corporate formalities are followed which establishes that as a practical matter the corporate separateness between Tropigas, S.A. and Tropigas International Corp. exists and to my knowledge has always been maintained.

12. Tropigas International Corp. is a holding company which owns Tropigas, S.A. and four other corporations.

13. Tropigas, S.A. is a Panamanian corporation, which is engaged in the sale

of liquefied petroleum gas in Jamaica and other countries in the Caribbean and Central America.

14. Tropigas, S.A. does not do business in the State of Florida or elsewhere in the United States.

15. Separate accounting, books and records are maintained at each division or subsidiary of Tropigas, S.A. Each division or subsidiary has its own bookkeeping staff.

16. Data processing services are provided by Tropigas Data Services, Inc. in Coral Gables which consist of preparation of consolidated financial statements of Tropigas International Corp. and computer generated management reports. Underlying accounting records and supporting documentation are prepared by personnel at the divisions and subsidiaries of Tropigas, S.A. and forwarded to

Tropigas Data Services, Inc. in Coral Gables for preparation of the aforementioned consolidated financial statements.

17. The accounting, books and records of the divisions and subsidiaries of Tropigas, S.A. are similar, because its divisions and subsidiaries are engaged in the same type of business, i.e., the sale of liquefied petroleum gas.

18. The relationship evidenced by the facts known to me concerning the existence and operations of Tropigas International Corp. and Tropigas, S.A. reflects a normal parent/subsidiary relationship. The divisions and subsidiaries of Tropigas, S.A., because of the diverse geographic, political, social and economic environments in which they operate, exercise considerable autonomy in their operations. Simply stated, Tropigas, S.A.'s business is conducted in foreign countries

whose social, political and economic conditions are frequently subject to significant changes which require local management to be able to promptly respond to those changes.

19. Each division or subsidiary of Tropigas, S.A. is operated by its general manager who is a resident of the country where that subsidiary or division is located.

20. The local manager of each Tropigas, S.A. subsidiary or division is responsible for the day-to-day operations of that business, the hiring and firing of its employees, the maintenance of its relationship with the local government, the expenditure of funds for its operations, the generation of revenues to satisfy capital, maintenance, and expansion needs, and the annual planning for operations as well as long term planning.

21. Some business policies of the subsidiary, Tropigas, S.A., are subject, by virtue of its stock ownership, to the ultimate review by Tropigas International Corp. and Tropigas International Corp. is informed of important actions taken by the management of the individual Tropigas, S.A. divisions or subsidiaries. However, the divisions or subsidiaries of Tropigas, S.A. have independent responsibilities for the management of their respective businesses, including control over day-to-day operations.

22. Each individual division or subsidiary of Tropigas, S.A. is responsible for the training of its employees, maintaining bank accounts and managing funds in the country where the operations are conducted, and is responsible generally for financial management of the division or subsidiary.

23. Each division or subsidiary of Tropigas, S.A. is responsible for its own marketing and advertising programs. These programs vary from country to country based upon social and economic conditions existing in those countries.

24. The Jamaican division of Tropigas, S.A. pays taxes in Jamaica. Tropigas International Corp. does not pay taxes in Jamaica because it is not doing business in that country.

25. Because of currency controls imposed by the Government of Jamaica which arise from that country's lack of foreign exchange or foreign currency, the Tropigas, S.A. division operating in Jamaica has been unable to remit dividends on a timely basis and has had and continues to have difficulty obtaining foreign currency for imports.

26. Currency controls and import restrictions limit the ability of the Jamaican division of Tropigas, S.A. to purchase materials, equipment and services outside of the country of Jamaica.

27. Coopers & Lybrand audits of Tropigas, S.A. have not been done in Florida. These audits are done in each foreign country in which a subsidiary or division of Tropigas, S.A. operates.

28. Coopers & Lybrand audits the Jamaican division of Tropigas, S.A. annually because Jamaican law or regulations requires annual audits.

FURTHER, AFFIANT SAYETH NOT.

/s/Kirk Frohme
KIRK FROHME

SWORN TO AND SUBSCRIBED before me the undersigned Notary Public of the State of

Florida at Large this 11th day of November, 1983, at Miami, Dade County, Florida.

/s/Wynona Dawn Neary
Notary Public, State of
Florida at Large

My commission expires:
10-1-87

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT

GENERAL JURISDICTION DIVISION

CASE NO. 82-25066 CA 20

RICHARD ANDERSON, et al.,)

Plaintiffs,)

vs.)

TROPIGAS INTERNATIONAL CORPORATION and TROPIGAS, S.A.,)

Defendants.)

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

COMES NOW, TOMMIE DEAN PORTER, who after being duly sworn does depose and say:

1. My name is Tommie Dean Porter and I am the President and Chief Executive Officer of Tropigas International Corp.

2. Tropigas International Corp. is a Delaware corporation which is not engaged

in business activities in the State of Florida.

3. Tropigas International Corp. does not engage in the manufacture, design, assembly, or distribution of LPG, cylinders or related products.

4. Tropigas International Corp. is a holding company which owns all of the stock of Tropigas, S.A.

5. Tropigas International Corp. has an office at 1701 Ponce de Leon Boulevard, Coral Gables, Florida, but it conducts no business in Florida. Tropigas International Corp. acts only as a holding company and manages its internal affairs at 1701 Ponce de Leon Boulevard.

6. Tropigas, S.A. was in existence and doing business prior to Tropigas International Corp.; Tropigas International Corp. did not create Tropigas, S.A.

7. Tropigas, S.A. is not engaged in business in the State of Florida or elsewhere in the United States and does not avail itself of any of the privileges and benefits of the law of the United States or Florida.

8. Tropigas, S.A. has no employees in the United States, nor does it have distributors or salesmen here.

9 Tropigas, S.A. is engaged in the business of selling liquified propane gas in Jamaica.

10. Tropigas, S.A.'s business in Jamaica is directed and controlled by its general manager in Jamaica.

11. The general manager of Tropigas, S.A. in Jamaica is responsible for the day-to-day operation of that division. He is also responsible for the financial and long-range planning for the operation and financing of that division of Tropigas, S.A.

12. Tropigas, S.A. does not maintain an office or telephone listing in the State of Florida.

13. Tropigas, S.A. is a separate business entity from Tropigas International Corp., and it maintains its own books and records.

14. Tropigas, S.A. is a self-sufficient business enterprise, and has not in the past and does not now borrow money from Tropigas International Corp.

15. Tropigas, S.A. does not advertise or solicit any business in the State of Florida.

16. Tropigas, S.A. closes no sales and performs no services in the State of Florida.

17. Tropigas, S.A. has no real or personal property in the State of Florida.

18. Tropigas, S.A. does not have or use the same logo as Tropigas International Corp.

19. The Jamaican division of Tropigas, S.A. is responsible for its own advertising and marketing of its products in Jamaica.

20. The general manager of Tropigas, S.A.'s division in Jamaica is responsible for the training of employees of that division, implementation of safety programs, and determination of the nature and type of equipment which shall be used in business activities conducted by that division.

21. Tropigas, S.A. has employees in Jamaica, and it conducts its operations in that country in accordance with the law and regulations applicable to its business there. Tropigas, S.A. pays taxes in Jamaica. Tropigas, S.A. is not subject to and does not pay income taxes in the United States, because it is engaged in no business in the United States and generates no revenue here.

22. Tropigas, S.A. is a Panamanian corporation established in April of 1954 and residing in Avenida, Central No. 33, Ciudad de Panama, Republic of Panama.

23. Tropigas, S.A. is subject to the jurisdiction of the courts in Jamaica and is subject to execution to satisfy a judgment, which may be entered against it in the courts of that country arising from the claims alleged in this Complaint.

24. Tropigas International Corp. is not subject to the jurisdiction of Jamaican courts, but will voluntarily appear and submit itself to the jurisdiction of the courts of that country in litigation arising from the claims alleged in this Complaint.

25. Tropigas International Corp. will agree to be subject to execution to satisfy any judgment, which may be entered against it in the courts of Jamaica aris-

ing from the claims alleged in the Complaint.

26. Tropigas International Corp. and Tropigas, S.A. have done business and/or conducted their activities in the same manner over the last five years. There have not been substantial changes in any of these companies' form or in their method or manner of operations during this period of time.

27. I make this affidavit based on my personal knowledge, and books and records of Tropigas International Corp. and Tropigas, S.A. which I have reviewed in my capacity as President and Chief Executive Officer of Tropigas International Corp.

FURTHER, AFFIANT SAITH NOT.

/s/Tommie Dean Porter
TOMMIE DEAN PORTER

SWORN TO AND SUBSCRIBED before me the undersigned Notary Public of the State of

Florida at Large this 11th day of November, 1983, at Miami, Dade County, Florida.

/s/Betty J. Kitchen
Notary Public, State of
Florida at Large

My commission expires:
12/30/84

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 82-25066-CA-20

RICHARD ANDERSON, et al)

Plaintiffs)

vs.)

TROPIGAS INTERNATIONAL)
CORPORATION and
TROPIGAS, S.A.,)

Defendants)

AFFIDAVIT

COMMONWEALTH OF JAMAICA)
PARISH OF KINGSTON)
CITY OF KINGSTON)

BEFORE ME, the undersigned authority appeared The Honourable Mr. Justice Leacroft Heriot Ulysees Robinson (Retired) who after being duly sworn did depose and say as follows:

1. My name is LEACROFT HERIOT ULYSEES ROBINSON. I am a citizen of Jamaica and I reside and have my postal address at Red Hills, in the parish of Saint Andrew.

2. I am a Barrister and a Jamaican Attorney-at-Law and have practised law in Jamaica, as a Barrister and a Judge for over thirty (30) years.

3. I studied law at Gray's Inn, one of the four Inns of Court in London, England. Thereafter, I was called to the bar in England in 1948 and practised law there for one year.

4. In 1949 I returned to Jamaica and was admitted to practise as a Barrister. In 1959 I was appointed Queen's Counsel, a status of distinction under the British system of law and practiced in that capacity until I was appointed President of the Court of Appeal in Jamaica in 1976. I continued to serve on that Court until my retirement in 1981.

5. In 1977 I was appointed to the Order of Jamaica in recognition of my "distinguished services to Jamaica in the

fields of Politics, Public Service and the Law".

6. I was the Attorney General of Jamaica from 1972 through 1976.

7. I am also a past President of the Bar Association of Jamaica and of the Organization of Commonwealth Caribbean Bar Associations.

8. I have been consulted by the Defendants in this action regarding questions of Jamaican law and the opinions expressed herein are based on my personal knowledge and experience as a lawyer and Judge in Jamaica for over thirty (30) years as stated above.

****

22. There is no legal procedure in Jamaica through which parties or witnesses may be compelled to give oral testimony in

Jamaica prior to the actual trial of this case.

FURTHER, AFFIANT SAITH NOT.

/s/ Leacroft Heriot Ulysees Robinson
LEACROFT HERIOT ULYSEES ROBINSON

I HEREBY CERTIFY that on this day, before, me, an officer duly authorized by the laws of the jurisdiction identified above to administer oaths and take acknowledgements, personally appeared LEACROFT HERIOT ULYSEES ROBINSON, who after being sworn did depose and say the foregoing as his free act and deed.

SWORN TO AND SUBSCRIBED BEFORE ME this 25th day of MARCH, 1983.

/s/ Ward D. Morrow
WARD D. MORROW
Consul of the United
States of America

DEPOSITION OF ANTHONY AUTORINO
September 15, 1983

Q. Did you have any decision-making role concerning the type of valve that would be used in a particular country?

A. No.

Q. Whose decision was that in 1981?

A. The division manager.

Transcript P. 28 Line 17 through P. 28 Line 22

* * *

DEPOSITION OF JAMES ISAAC BULLEN
April 4, 1983

Q. So, you, as president of Tropigas, S.A., supervise the various managers in the various divisions of Tropigas, S.A. around the caribbean and Latin America?

. . .

A. No, sir, I don't supervise them. I receive the reports--They advise me what is going on at times but I don't get into the nitty-gritty and supervise, no.

They receive no supervision from me.

Transcript P. 12 Line 2,3,4,12,13,14,15,16

* * *

Q. So, it is your testimony that no contracts are negotiated at the Ponce office for Tropigas, S.A.?

A. Not to my knowledge.

Transcript P. 60 Line 2 through P. 60 Line 4

* * *

Q. Who decides what valves are to be used on the 25 pound tanks in Jamaica?

A. The Jamaican manager.

Transcript P. 87 Line 24 through P. 88 Line 1

* * *

Q. Is there one individual in Tropigas, S.A. responsible for the safety throughout the division?

. . .

A. No, the local manager is responsible for safety.

Transcript P. 94 Line 24,25 P. 95 Line 4,5

* * *

Q. I mean, as president of Tropigas, S.A., you must rely on the safety procedures established by Tropigas International through Mr. Lopez and the operation managers in the various divisions of Tropigas, S.A., is that correct?

. . .

A. No, I rely on the safety procedures established in the country in accordance to the regulations in these countries.

I rely on the local manager to assure that these procedures are indeed applied.

Transcript P. 97 Line 8,9,10,11,12,14,15, 16,17,18

* * *

Q. Where is the Tropigas Jamaica purchasing their cylinders at the present time?

A. From another cylinder manufacturer in Jamaica.

Q. What manufacturer is that?

A. It is a local company. I don't recall the name.

Q. Who oversees those purchases?

A. The local manager.

Q. Who supervises the local manager in those purchases?

A. He works jointly with the local operations manager.

Q. Do you oversee these purchases?

A. No.

Q. Who determines how many cylinders should be purchased and when?

A. The local manager.

Transcript P. 103 Line 19 through P. 104 Line 11

* * *

Q. Tropigas, S.A. gets no income from the State of Florida, does it?

A. No income.

Transcript P. 138 Line 6 through P. 138 Line 8

* * *

Q. Mr. Bullen, referring to the Jamaican division of Tropigas, S.A., who makes the decisions concerning hiring and firing of employees in that Jamaican division?

A. The local manager.

Q. Who selects the distributors of Tropigas products for the S.A. division in Jamaica?

A. The local manager.

MR. DICKMAN: You don't mean, the distributor, you mean the outlet?

MR. KEEDY: Distributors.

MR. DICKMAN: Well, that is their business. They distribute gas. That is what the company does.

I just don't understand the question. Let me object to it as being vague.

BY MR. KEEDY:

Q. Who determines the manner of local distribution of Tropigas products in Jamaica?

A. The local manager.

Q. Who selects retail outlets for Tropigas products in Jamaica?

A. The local manager.

Q. Who establishes the salaries of Tropigas employees in Jamaica?

A. The local manager.

Q. Who establishes the working conditions for Tropigas in Jamaica?

A. The local manager.

Q. Who makes the decisions associated with the acquisition of the equipment, plant, office space and other facilities in Jamaica?

A. The local manager.

Q. Who makes decisions concerning the repair and maintenance of office and plant facilities in Jamaica?

A. The local manager.

Q. Who makes decisions concerning the maintenance and acquisition or other handling of equipment used in Tropigas' business in Jamaica?

A. The local manager.

Q. Who determines the hours of operation of Tropigas facilities in Jamaica?

A. The local manager.

Q. Who makes decisions for vacation of the employees in Jamaica?

A. The local manager.

Q. Who establishes and maintains local marketing plans and strategies in Jamaica?

A. The local manager.

Q. Who assures that Tropigas complies with the local government regulations and health standards in Jamaica?

A. The local manager.

Q. Who pays taxes and licensing fees, if any, in Jamaica?

A. The local company.

Q. Who handles the bookkeeping and accounting for the division in Jamaica?

A. The local accounting department.

Q. Who pays the salaries and expenses of the operation of Tropigas, S.A. in Jamaica?

A. The local companies.

Q. Are those salaries and other expenses paid with funds from bank accounts in Jamaica?

A. Yes, sir.

Q. Who handles complaints that customers may make concerning Tropigas operations in Jamaica?

A. The local manager.

* * *

Q. Who is responsible for maintaining--excuse me.--for managing the Tropigas, S.A. personnel in Jamaica?

A. The local manager.

Q. Who is responsible for acquiring the LPG and other products sold by Tropigas, S.A. in Jamaica?

A. The local manager.

Transcript P. 139 Line 1 through P. 142 Line 1

* * *

Q. The purchasing department at Tropigas International does that or has it had a decision-making role as to what type of valve would be used in any particular country, including Jamaica?

A. To my knowledge, no.

Q. Are you aware currently of any department of International that has decision-making powers in reference to what type of valve to use?

A. Local management is the only one.

Transcript P. 148 Line 16 through P. 148 Line 24

* * *

DEPOSITION OF JOSE LUIS COTERILLO
May 25, 1983

Q. And were you providing Jamaica with your technical advice?

A. When requested, yes.

Q. And were you requested to provide this advice both by officers in Tropigas International and officers in Tropigas, S.A.?

. . .

A. The advice was given upon the request of the local people, whenever they required the advice.

Q. Well, who in Tropigas International or Tropigas, S.A. allowed you to answer questions that the local division would ask you regarding technical matters?

. . .

A. Well, it was--It is understood that I am supposed to give technical counsel if requested to do so by the local managers.

Transcript P. 15 Line 14 through P. 16 Line 12

* * *

Q. Have you recommended that the use of valves in cylinders that are used in Jamaica are appropriate at the present time?

A. I haven't been asked to indicate any recommendations regarding the use of those valves and cylinders in Jamaica where there is government regulations controlling that.

Transcript P. 96 Line 6,7,8,15,16,17,18

* * *

DEPOSITION OF GEORGE D. FINLEY
September 15, 1983

Q. They have their own divisions in these different countries?

A. Yes.

Q. And they have their own checking accounts, operating accounts.

A. Yes.

Transcript P. 39 Line 12 through P. 39 Line 17

* * *

DEPOSITION OF NICHOLAS LOPEZ
September 16, 1983

Q. Do you know who in Tropigas, S.A. Corporation makes decisions with reference to the sale, design, storage, maintenance or inspection of L.P. gas products?

A. Tropigas, S.A.?

Q. Yes.

A. Yes.

Q. Who?

A. The local managers.

Transcript P. 79 Line 16 through P. 79 Line 24

* * *

Q. When a division manager makes a purchase, an overseas division manager makes a purchase in that country, is that invoice sent to you for review?

A. No.

Transcript P. 86 Line 1 through P. 86 Line 4

* * *

DEPOSITION OF MIGUEL R. MIGUEL
September 1, 1983

Q. Is it your testimony that you have never purchased any cylinders for Jamaica out of the Coral Gables office?

A. That's right.

Transcript P. 25 Line 17 through P. 25 Line 20

* * *

Q. What other supplies do you purchase out of the Coral Gables office, for Jamaica?

A. We process orders for whatever items are not available locally. We try to assist them in securing those items.

In the case of Jamaica, it is very, very minimal because they have import restrictions and they have currency controls and more than 90 percent of what they require is purchased locally.

Transcript P. 27 Line 20 through P. 28 Line 3

* * *

Q. What are the gross amounts of purchases, in dollars, that you have made on behalf of Tropigas, S.A. in 1982?

. . .

A. We keep records, but we don't maintain those statistics because what we do is, we just process--let's say in the case of Jamaica, it's so minimal that I don't think we have ordered more than $10,000 in the whole thing. I can't remember.

Transcript P. 52 Line 2,3,4,12,13,14,15,16

* * *

DEPOSITION OF THOMAS JOSEPH PERKINS
June 7, 1983

Q. All of these divisions come to Coral Gables when they have a problem, for example, in engineering or plant design?

A. Not necessarily. They have, as I mentioned to you, they have their own operations departments and they also have certain people that have--

You take a place like San Salvador that is a city of 400,000 people and they have-they have all kinds of consulting services there. They can resolve--they have engineering staffs, this and that and the other. You know, Coral Gables is not the only source of consulting for those people, it is one of them.

Transcript P. 120 Lines 13 through 24

* * *

Q. [By Mr. Dickman] Mr. Coterillo doesn't answer engineering questions here in Coral Gables.

A. Yes, he--He usually--If he answers the questions, he is usually there, he goes to the--He will function as a, basically, as an on-sight consultant to the problem or something.

Transcript P. 136 Lines 4 through 9

* * *

Q. When Tropigas International provides a service to Tropigas, S.A., do they charge a fee, an administrative fee?

A. There is an administrative charge levied against all subsidiaries.

Transcript P. 206 Line 25 through P. 207 Line 4

* * *

Q. You have actual knowledge of that?

A. Yes. Jamaica says, if you are a division as opposed to a company, you can remit your profits 100 percent to your parent, however, it doesn't say anything about administrative expenses are a deduction on your profit.

Unfortunately Jamaica is in a position with foreign exchange right now that they have not remitted 1979 profits yet. They have remitted 1978, so Jamaica is five years behind in the remittance of profits.

Transcript P. 212 Line 18 through P. 213 Line 3

* * *

CONTINUED DEPOSITION OF
THOMAS JOSEPH PERKINS
June 29, 1983

Q. Mr. Perkins, on the subject of bank accounts, which Mr. Dickman has been of late discussing each division and subsidiary of Tropigas, S.A. that operates in the Islands of the Caribbean or in Central America has its own banking facilities in its host country, does it not, sir?

A. Yes, that is correct.

Q. That bank account is used to pay the salaries of the people that work in that division or subsidiary?

A. Yes, that's true.

Q. It is used to pay the taxes that are levied by the host country?

A. Yes, sir.

Q. It is used to pay for the acquisition of materials that are obtainable in that country?

A. That's correct.

Q. And for services that are obtainable in that country?

A. Yes, sir.

Q. The bank account which has funds kept in the Bahamas through the Southeast Bank, when that is used to pay for materials for the S.A. subsidiaries or divisions, are those materials that are obtained with the assistance of Tropigas International in the United States?

A. That's correct.

Q. Are they used to pay for anything else through that bank account maintained by the Southeast?

A. You mean for the whole division?

Q. Yes, sir.

A. No. If it is a purchase in the United States that the other--that the local division cannot perform, that is when those funds are used and only then.

Transcript P. 145 Line 10 through P. 146 Line 17

* * *

DEPOSITION OF TOMMIE DEAN PORTER
May 25, 1983

Q. Who makes the recommendations to the local divisions?

A. Nobody makes recommendations to the local divisions. The local divisions originate and that in turn brings it to us.

Q. Who is "us"?

A. To Tropigas, S.A. or to Tropigas International Corporation.

Q. And they ask permission from Tropigas International Corporation or Tropigas, S.A. as to whether or not they can implement a certain policy or procedure in their local operation?

A. No, no, they have the authority.

We delegate the authority to those people to make such types of decisions.

We just monitor the company.

Q. Well, what authority do you delegate to them?

A. I delegate to them that they are as equal as the chief operating officers for those particular branches. They have full authority down there to hire, to fire, et cetera.

The only types of measurements of controls that are put to that is what is normally put through any organization as to the generation of profits, the types of returns that are expected, and what kind of returns we are making on those investments.

Transcript P. 16 Line 9 through P. 17 Line 10

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Q. Now, Tropigas, S.A. is one corporation, is that correct?

A. That is right.

Q. And that is a wholly-owned subsidiary of Tropigas International Corporation.

A. That is right.

Transcript P. 20 Line 15 through P. 20 Line 20

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Q. That doesn't make any sense; a separate management of every company.

A. Of every country. Every one of the companies that we operate in has its own management, has its own accounting staff and they are, in any sense, the central management of that--

Q. Of their location?

A. Of their location. Transcript P. 21 Line 11 through P. 21 Line 18

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Q. Why do you say a very minute amount of purchasing is done through the Coral Gables office for Tropigas, S.A.?

A. Because most of the managers are responsible for their own purchases in that, and they conduct those things themselves, and I say, "a minute amount," because if they can't find something and it is of particular importance to them, they ask for the assistance of Tropigas International. That is not a major function for the people that are handling that.

Transcript P. 43 Line 17 through P. 44 Line 1

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Q. What individual supervises the safety of Tropigas, S.A.?

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A. The safety procedures is done within each one of the divisions or subsidiaries in Tropigas, S.A.

Transcript P. 74 Line 24,25 P. 75 Line 2,3,4